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Supreme Court of the United States

OCTOBER TERM, 1936.

No. 446.

AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, A CORPORATION,
PETITIONER,

VS.

EDWIN P. HAWORTH AND CORA M. HAWORTH.

PETITIONER'S REPLY TO RESPONDENTS' BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI.

E. R. Morrison,
Counsel for Petitioner.

Chas. C. Byers,
Douglas Stripp,
Morrison, Nugent, Wylder & Berger,
Of Counsel.

E. L. MENDENHALL, INC., 8 WEST 9TH ST., KANSAS CITY, MO.

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There can be but one way to determine whether there is a conflict between decisions rendered by different courts and that is by examining the opinions and ascertaining the specific points decided in each case. The decision of the Circuit Court of Appeals in this case is not based on the point which respondents now raise, the gist of which is that a decision in this cause in favor of the respondents would be only a determination of present existence of disability and that there might be future litigation as to whether the disability continued.

The argument of respondents, therefore, resolves itself into the contention that the Circuit Court of Appeals might have decided this case (although it did not do so) upon a ground which was not involved in the decisions with respect to which conflict is claimed. We do not understand that any such rule of law obtains in determining whether a writ of certiorari should issue. Such a theory would completely destroy one of the principal purposes of the issuance of the writ by this Court, for the result would be to leave unresolved the conflict of decisions with respect to matters actually decided.

But if it should be deemed pertinent to examine the merits of this argument at this time, then we submit that the contention that a judgment rendered in this cause would lack essential elements of finality is unsound. If the issues are determined in favor of the petitioner, there will be a final adjudication that the policies have lapsed for non-payment of premiums and that would terminate the controversy for all time. If the issues are determined in favor of respondents, then there will be a final adjudication of every issue that could be determined if suit had been filed by the insured to recover accrued monthly cash benefits, or if a conventional suit in equity had been filed by the insured to set aside the cancellation of the policies by petitioner.

In other words, a judgment rendered in this cause would have every element of finality that it would have had if the parties were reversed and we can conceive of no better test of this question.

It is obvious that no Court would refuse to entertain a suit by the insured for monthly disability ben-

efits simply because the right to such benefits in the future might terminate upon recovery from disability.

Every suit brought under conventional procedure involving adjudication of present rights under a contract of a continuing nature presents the possibility that, if there should be a future breach, then there might be future litigation. But this affords no ground for denying present relief.

No better illustration of this principle can be found than is shown by the well settled rule that a policyholder is entitled to maintain a suit against a life insurance company to set aside the cancellation of a policy and to have a decree that the policy is still in force. The authorities upholding this principle are cited in the petition at page 13. In such a case the only matter adjudicated is the present existence of the policy and, to maintain it in force as a continuing obligation, the policyholder must comply with the obligations, or conditions, of the policy with respect to the payment, or waiver, of premiums.

A final judgment rendered in this case would not be merely a determination of fact as to disability. It would be a final determination of rights and liabilities arising from, and determinable by, a finding as to whether or not disability existed. The Declaratory Judgment Act would have little, if any, value if issues of fact were not determinable in cases brought thereunder. The Act shows on its face that it was clearly intended that issues of fact could be, and should be, decided in suits brought thereunder because it contains a specific provision for trial of such question by jury.

The contention that a decision in favor of the respondents would not entitle the insured to a present judgment against the insurance company is, we submit, completely erroneous. The insured could, in his answer, ask for judgment for monthly cash benefits which have already accrued. Or, if he fails to assert his claim in his answer, he could proceed summarily on notice to obtain such relief under paragraph (2) of the Act. In addition thereto, he would have a final judgment that his policies are still in force. And such a decree would also be a final adjudication that he has, and has the right to receive upon demand, accumulated cash surrender values and dividend additions under his policies to the same extent as though these premiums had been paid in cash by him at the times provided in the policy.

Respectfully submitted,

Aetna Life Insurance Company of Hartford, Connecticut, a Corporation,

By E. R. Morrison,

Counsel for Petitioner.

Chas. C. Byers,
Douglas Stripp,
Morrison, Nugent, Wylder & Berger,
Of Counsel.